



Employees' Retirement Board of Rhode Island
Monthly Meeting Minutes
Wednesday, April 8, 2015
9:00 a.m.
2nd Floor Conference Room, 50 Service Avenue

The Monthly Meeting of the Retirement Board was called to order at 9:05 a.m. Wednesday, March 11, 2015, in the 2nd Floor Conference Room, 50 Service Avenue, Warwick, RI.

I. Roll Call of Members

The following members were present at roll call: Treasurer Seth Magaziner; Vice Chair William B. Finelli; Gary R. Alger, Esq.; Daniel L. Beardsley; Roger P. Boudreau; Michael R. Boyce; Mark A. Carruolo; Michael DiBiase; John P. Maguire; John J. Meehan; Thomas A. Mullaney; Claire M. Newell; Louis M. Prata and Jean Rondeau.

Also in attendance: Frank J. Karpinski, ERSRI Executive Director and Attorney Michael P. Robinson, Board Counsel.

Recognizing a quorum, Chairman Magaziner called the meeting to order.

II. Approval of Minutes

On a motion by Gary R. Alger, Esq., and seconded by Roger P. Boudreau, it was unanimously

VOTED: To approve the draft minutes and the executive session draft minutes of the March 11, 2015 meeting of the Retirement Board of the Employees' Retirement System of Rhode Island.

III. Chairperson's Report

Treasurer Magaziner reported that an agreement has been reached with a significant majority of the plaintiff groups in the pension litigation. The Treasurer noted that the deal maintained more than 90% of the savings of the reform and will lead to a resolution not only of suits regarding the 2011 reform but also of previous reforms as well. He advocated that the Board approve the agreement today while in executive session.

Attorney Robinson said a motion to convene into executive session would be in order pursuant to Rhode Island General Laws section §42-46-5 (a) (2) to discuss the cases identified on the agenda as listed below involving litigation against the System, the Retirement Board and Executive Director Karpinski:

- *Rhode Island Council 94, AFSCME, AFL-CIO, et al. v. Lincoln Chafee, et al.*; C.A. No. 10-2859;
- *Rhode Island Public Employees' Retirement Coalition, et al. v. Lincoln D. Chafee, et al.*, C.A. No. PC 12-3166;
- *Bristol/Warren Regional School Employees, Local 581, AFSCME, Council 94, AFL-CIO, et al. v. Lincoln D. Chafee, et al.*, C.A. No. PC12-3167;

- *Rhode Island Council 94, AFSCME, AFL-CIO, et al. v. Lincoln Chafee, et al.*, C.A. No. PC12-3168; and
- *Woonsocket Fire Fighters, IAFF Local 732, AFL-CIO, et al. v. Lincoln D. Chafee, et al.*, C.A. No. PC12-3579.

A motion was made by Gary R. Alger, Esq., and seconded by Daniel L. Beardsley to convene the Board in Executive Session to discuss the identified litigation matters listed on the agenda.

A roll call vote was taken to enter into Executive Session, the following members were present and voted Yea: General Treasurer Seth Magaziner; Vice Chair William B. Finelli; Gary R. Alger, Esq.; Daniel L. Beardsley; Roger P. Boudreau; Michael R. Boyce; Mark A. Carruolo; Michael DiBiase; John P. Maguire; John J. Meehan; Thomas A. Mullaney; Claire M. Newell; Louis M. Prata and Jean Rondeau. It was unanimously

VOTED: To convene the Board in Executive Session pursuant to Rhode Island General Laws section §42-46-5 (a) (2) to discuss the matter identified on the agenda, involving pending litigation against the System, the Retirement Board and the Executive Director.

[Executive Session]

The Board thereafter convened in executive session.

[Return to Open Session]

Upon returning to open session, Board Counsel Michael P. Robinson noted for the record that three unanimous votes had been taken in executive session.

He said a motion was made by Michael DiBiase and seconded by Thomas A. Mullaney, and it was

VOTED: To approve the terms of the settlement as presented in both the March 13, 2015 letter from Gabriel Roeder Smith and Company (GRS) and Exhibit B-Outline of Terms for Settlement Agreement of Pension Reform Litigation and to authorize the Treasurer as chairman of the Retirement Board and Executive Director Karpinski to execute the necessary settlement documents associated with the settlement of the litigation

He said another motion was made by Jean Rondeau and seconded by Thomas A. Mullaney, and it was

VOTED: To seal the executive session minutes consistent with Rhode Island General Laws §42-46-4 and §42-46-5 (a) (2) to the extent the disclosure could jeopardize the strategy and negotiation going forward.

Attorney Robinson said that those Board members participating in these 2 votes were Treasurer Seth Magaziner; Gary R. Alger, Esq.; Daniel L. Beardsley; Mark A. Carruolo; Michael DiBiase; Thomas A. Mullaney and Jean Rondeau. Attorney Robinson said the the following Board members recused pursuant to the 2013 Ethics Commission opinion; William B. Finelli; Roger P. Boudreau; Michael R. Boyce; John P. Maguire; John J. Meehan; Claire M. Newell and Louis M. Prata. Attorney Robinson noted that there was a quorum of the Board present at all times and for all actions taken by the Board while in Executive Session.

Lastly, a motion was then made by Jean Rondeau and seconded by Thomas A. Mullaney, where all members voted and it was unanimously

VOTED: To exit executive session and return to open session.

Treasurer Magaziner in conclusion expressed his gratitude and pleasure with the outcome of the votes noting it has been a frustrating time for the Board and members of ERSRI over the last few years. The Treasurer said the Board has acted appropriately in doing its due diligence in moving this matter forward and hopes that this momentum continues now focusing on the members staying well informed of their options when planning their retirement.

IV. Executive Director's Report

Director Karpinski apprised the Board that they were in possession of the revised agenda, the Pension Application Report and the Disability Subcommittee Report.

- **Update on the Cyber and Privacy Insurance Procurement**

Director Karpinski apprised the Board that consistent with the vote in Executive Session in February *"To procure AIG as the coverage provider for Cyber and Privacy Insurance upon the System's completion and submission of the AIG insurance policy application, and upon AIG's satisfactory approval of the application"*, the Cyber and Privacy Insurance has been procured at a cost of \$69,994 effective February 28, 2015.

Director Karpinski reminded the Board of the May 15, 2015 annual fiduciary training and continuing education session at the University of Rhode Island, Alton Jones Campus, Whispering Pines Conference and noted that the agenda will be distributed next week to the Board. The Director reminded the Board that training is required by statute and stressed that Board members should make every effort to attend.

Director Karpinski updated the Board on the *"Report of Contributions"* delinquency report in the Board book. The Director noted that the Town of Middletown, Hopkinton Police Department, Town of Scituate, Town of Cumberland, North Kingstown Police Department and Limerock Administrative Services have paid up and are now current. Remaining of the outstanding are the Central Falls Housing Authority and Warren Housing Authority who have until May 15th to remit their contributions; and as is standard practice, those remaining delinquent will be addressed using the normal collection of funds procedure. He noted no change to the current ongoing Central Coventry Fire District matter.

Mr. DiBiase asked if the amount Central Coventry Fire District owes is growing and Director Karpinski said it is by virtue of interest cost on the outstanding unpaid contributions. However, he noted that they are current on contributions subsequent to the receivership. The Director asked Attorney Robinson to respond on the bankruptcy proceedings and he said ERSRI recently filed a proof of claim on behalf of the system. Attorney Robinson said the amount of contributions is a fixed amount but included in the proof of claim the assumed investment rate of return of 7.5 percent on the outstanding contributions and noted that if the System had use of those funds, it would have grown at that number.

V. Administrative Decisions

Disability Appeal – Damon Borrelli vs. ERSRI

Included in Board Members' Books, under separate cover, were the Findings of Fact as concluded by the Disability Subcommittee, transcripts from the appeal to the disability subcommittee, medical and supporting information in the matter of *Damon Borrelli vs.*

ERSRI. Attorney Robinson asked if consistent with Regulation Number 9, *Rules pertaining to the application to receive an Ordinary or Accidental Disability Pension*, there were any written briefs, legal memoranda, or exceptions to the conclusions and recommendation of the Disability Subcommittee, which must have been submitted to the Executive Director not later than 10 days prior to the hearing. Director Karpinski apprised the Board there was, and that such materials are included in the Board members' books.

Attorney Robinson then said that pursuant to ERSRI's regulations, each party to the proceeding has the right to appear and to make oral arguments before the Retirement Board. Consistent with the Board's long standing policy, he apprised Mr. Borrelli that this is not an opportunity to present new factual material or evidence to the Board, and that pursuant to ERSRI's regulations and Rhode Island case law, the Board owes deference to the Disability Subcommittee on factual determinations and questions of credibility, and will not overturn those determinations of fact or credibility unless such determinations are found to be clearly wrong.

Attorney Robinson said Attorney Gary T. Gentile, General Counsel for the International Brotherhood of Police Officers was representing Officer Damon Borrelli and Attorney Michael Ursillo was representing the Town of South Kingstown.

There being a stenographer present, Attorney Robinson then provided a synopsis of the matter. At the conclusion of the presentations, a motion was made by Michael R. Boyce and seconded by Roger P. Boudreau to remand this matter back to the Disability Subcommittee for two additional IME's. A roll call was taken, and the following members voted Yea: William B. Finelli; Roger P. Boudreau; Michael R. Boyce; John P. Maguire; John J. Meehan; Claire M. Newell and Louis M. Prata. The following members voted Nay: Treasurer Seth Magaziner; Daniel L. Beardsley; Mark A. Carruolo; Michael DiBiase; Thomas A. Mullaney and Jean Rondeau.

There being 13 votes cast, 7 voted in the affirmative, and 6 voted in the negative. Consistent with Rhode Island General Laws §36-8-6, *Votes of the Board -- Record of Proceedings*, there being a majority vote of the members present and voting at which a quorum is present, it was then

VOTED: To remand the matter of *Damon Borrelli vs. ERSRI* back to the Disability Subcommittee to obtain two additional IME's for the accidental disability application.

Disability Appeal – Karen J. Furtado vs. ERSRI

Included in Board Members' Books, under separate cover, were the Findings of Fact as concluded by the Disability Subcommittee, transcripts from the appeal to the disability subcommittee, medical and supporting information in the matter of *Karen Furtado vs. ERSRI*. Attorney Robinson asked if consistent with Regulation Number 9, *Rules pertaining to the application to receive an Ordinary or Accidental Disability Pension*, there were any written briefs, legal memoranda, or exceptions to the conclusions and recommendation of the Disability Subcommittee, which must have been submitted to the Executive Director not later than 10 days prior to the hearing. Director Karpinski apprised the Board there was, and that such materials are included in the Board members' books.

Attorney Robinson then said that pursuant to ERSRI's regulations, each party to the proceeding has the right to appear and to make oral arguments before the Retirement

Board. Consistent with the Board's long standing policy, he apprised Ms. Furtado that this is not an opportunity to present new factual material or evidence to the Board, and that pursuant to ERSRI's regulations and Rhode Island case law, the Board owes deference to the Disability Subcommittee on factual determinations and questions of credibility, and will not overturn those determinations of fact or credibility unless such determinations are found to be clearly wrong. Attorney Robinson noted for the record that Attorney Shelagh R McCahey was representing Ms. Furtado.

There being a stenographer present, Attorney Robinson then provided a synopsis of the matter. Mr. William B. Finelli recused himself on the matter.

At the conclusion of the deliberations, a motion was made by Roger P. Boudreau and seconded by John P. Maguire to remand this matter back to the Disability Subcommittee for consideration of a report from worker's compensation by Dr. Steven Blazar and another report from Albert Sabella, a vocational services expert, as such documents were not available to the subcommittee at the time of their decision of the accidental disability application. A roll call was taken, and the following members voted Yea: Roger P. Boudreau; Michael R. Boyce; John P. Maguire; John J. Meehan; Claire M. Newell and Louis M. Prata. The following voted Nay: Treasurer Seth Magaziner; Daniel L. Beardsley; Mark A. Carruolo; Michael DiBiase; Thomas A. Mullaney and Jean Rondeau.

There being 12 votes cast, 6 voted in the affirmative, and 6 voted in the negative. Consistent with Rhode Island General Laws §36-8-6, *Votes of the Board -- Record of Proceedings*, there not being a majority vote of the members present and voting at which a quorum is present, the motion failed.

Upon further discussion, a motion was then made by Jean Rondeau and seconded by Michael DiBiase to uphold the decision of the Disability Subcommittee denying the original accidental disability application. A roll call was taken, and the following members voted Yea: Daniel L. Beardsley; Mark A. Carruolo; Michael DiBiase; Thomas A. Mullaney and Jean Rondeau. The following voted Nay: Treasurer Seth Magaziner; Roger P. Boudreau; Michael R. Boyce; John P. Maguire; John J. Meehan; Claire M. Newell and Louis M. Prata.

There being 12 votes cast, 5 voted in the affirmative, and 7 voted in the negative. Consistent with Rhode Island General Laws §36-8-6, *Votes of the Board -- Record of Proceedings*, there not being a majority vote of the members present and voting at which a quorum is present, the motion failed.

The Board then further deliberated and a motion was made by Roger P. Boudreau and seconded by John P. Maguire to overturn the decision of the Disability Subcommittee and award the applicant an accidental disability at 66 2/3 percent. A roll call was taken and the following members voted Yea: Treasurer Seth Magaziner; Roger P. Boudreau; Michael R. Boyce; John P. Maguire; John J. Meehan; Claire M. Newell and Louis M. Prata. The following voted Nay: Daniel L. Beardsley; Mark A. Carruolo; Michael DiBiase; Thomas A. Mullaney and Jean Rondeau.

There being 12 votes cast, 7 voted in the affirmative, and 5 voted in the negative. Consistent with Rhode Island General Laws §36-8-6, *Votes of the Board -- Record of Proceedings*, there being a majority vote of the members present and voting at which a quorum is present, it was then

VOTED: To overturn the decision of the Disability Subcommittee in the matter of *Karen J. Furtado vs. ERSRI* and award Ms. Furtado an accidental disability at 66 2/3 percent.

VI. Approval of the March Pensions as Presented by ERSRI

On a motion by Jean Rondeau and seconded by Roger P. Boudreau, it was unanimously

VOTED: To approve the March pensions as presented.

VII. Legal Counsel Report

Attorney Robinson asked the Board if there were any questions of his report and there were none.

VIII. Committee Reports

Disability Subcommittee:

The Disability Subcommittee recommended the following actions on disability applications for approval by the full Board as a result of its meeting on Friday, April 3, 2015:

Name	Membership Group	Type	Action
1. Benitz Fernandez	State	Accidental	Deny
2. Micheal Ray	Municipal	Accidental	Postpone
3. Nicholas Guilmette	Municipal	Accidental	Approved @ 66 2/3%
4. Jorge Lomastro	Teacher	Accidental --Deny	Ordinary-- Approve
5. Jane Carr	Teacher	Accidental	Approved @ 50%
6. Kathleen Gince	Municipal	Accidental	Approved @ 66 2/3%
7. Patricia Pryor	State	Accidental	Approved @ 50%
8. Michelle Desrosiers	State	Accidental --Deny	Ordinary-- Approve
9. Timothy Hurley	State	Accidental	Postpone

Name	Membership Group	Type	Action
10. Dana Aspinwall	Municipal	Ordinary	Approve
11. Peter Machado	Municipal	Ordinary	Approve

On a motion by William A. Finelli and seconded by Michael R. Boyce, it was

VOTED: To approve the recommendation of the Disability Subcommittee meeting of Friday, April 3, 2015 on items 5 and 6.

John P. Maguire recused himself from the vote on numbers 5 and 6.

Daniel L. Beardsley voted Nay on the vote for numbers 5 and 6.

On a motion by William A. Finelli and seconded by Michael R. Boyce, it was

VOTED: To approve the recommendation of the Disability Subcommittee meeting of Friday, April 3, 2015 on item 7 and 9.

Claire M. Newell recused herself from the vote on numbers 7 and 9.

Daniel L. Beardsley voted Nay on the vote for numbers 7 and 9.

On a motion by William A. Finelli and seconded by Michael R. Boyce, it was

VOTED: To approve the recommendation of the Disability Subcommittee meeting of Friday, April 3, 2015 on items 1, 2, 3, 4, 8, 10 and 11.

Daniel L. Beardsley voted Nay on the vote for numbers 1, 2, 3, 4, 8, 10 and 11.

IX. Adjournment

There being no other business to come before the Board, on a motion by Roger P. Boudreau and seconded by John P. Maguire, the meeting adjourned at 11:19 a.m.

Respectfully submitted,

Frank J. Karpinski

Executive Director